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August 8, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, and Cox TMI Wireless, LLC, WT Docket No. 12-4; Applications of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC, WT Docket No. 12-175
Notice of *Ex Parte* Meeting

Dear Ms. Dortch,

On Tuesday August 7th, Derek Turner, Research Director of Free Press and Joel Kelsey, Policy Advisor of Free Press met with David Goldman, Senior Legal Advisor, and Paul Murray, Acting Senior Legal Advisor to Commissioner Rosenworcel.

During the meeting, we summarized our arguments made in various filings in the above captioned proceedings. Specifically, we noted that the review process has produced evidence demonstrating the following truths that the Commission must recognize:

- Verizon has badly overstated its need for the amount of AWS spectrum it seeks to acquire through these transactions. Verizon is taking the path of least resistance in its efforts to increase network capacity, and in doing so is harming competition and consumers. Verizon is only able to take this approach because it enjoys substantial market power.
- The U.S. wireless market is not facing a looming spectrum crisis, but is currently in the midst of a spectrum management and competition crisis that is exacerbated by the spectrum gap between the Twin Bells (Verizon and AT&T) and all other carriers. We used the attached chart to illustrate the extent of the Twin Bell's market power.
- The spectrum gap poses a particular threat to competition in the emerging 4G mobile broadband market.
- The spectrum gap is in part due to the failure of FCC policy and the secondary markets to efficiently allocate spectrum in a manner that promotes meaningful competition. This "spectrum allocation crisis" manifests itself in carrier and spectrum speculators hording and warehousing spectrum, but is also seen in the unwillingness of the Twin Bells to offer data roaming services on reasonable terms and conditions.

- The FCC's spectrum screen is broken and is not an appropriate tool for judging the impact of a particular transaction on market competitiveness or whether a particular transaction is in the public interest.
- The wireless market has non-spectrum structural barriers to competition that the joint agreements in these transactions will exacerbate.

During the meeting we also noted how the review and Verizon's subsequent 11th hour deal with T-Mobile underscores the duplicitous nature of Verizon's spectrum claims. In the deal with T-Mobile, Verizon has volunteered to reduce its AWS spectrum holdings in regions of the U.S. where it generally was claiming spectrum exhaust before the Commission just weeks prior. Specifically we pointed out that Verizon, through the deal with T-Mobile, is voluntarily reducing its AWS holdings to 30 MHz in 24 markets that it otherwise would have held 40 or more MHz. Verizon's voluntary divestiture *below* 40 MHz in these markets suggests that either Verizon is badly overstating its need for 40 MHz of AWS in any given market, or the carrier is making the implicit argument that the public interest benefits of the transfer of spectrum to a maverick competitive carrier like T-Mobile outweigh the potential harms that might occur if Verizon's self-serving capacity predictions come true. We suggested that this voluntary reduction demonstrates conclusively that further spectrum divestitures would better serve the public interest than letting Verizon horde excess spectrum during a time of a supposed spectrum crisis.

We also urged the Commission to attach strong buildout conditions to whatever AWS spectrum Verizon is granted. We suggested that more aggressive buildout deadlines could reduce Verizon's incentives to horde excess AWS spectrum, or at the very least would, in combination with data-roaming obligations, create improved incentives for Verizon to wholesale this excess capacity. We urged the Commission to avoid the easily circumvented "substantial service" requirements and instead require strong, *market specific* buildout requirements, backed with meaningful penalties.

We discussed our unresolved concerns with the Joint Marketing and Joint Operating Entity agreements between Verizon, Comcast, Cox, Time Warner Cable, and Bright House Networks. We discussed how Congress in 1996 envisioned a future of robust competition between phone and cable companies, not a future where they stopped competing and joined forces. We suggested the Act requires the Commission to be skeptical of these collaborations, which undermine Congressional goals, and to take action to ensure they are not used as vehicles to distort markets and thwart competition. While we remain skeptical that these joint arrangements can be conditioned in any way to prevent competitive harms, we did suggest that prohibiting the JMAs in the local markets where Verizon's *LEC footprint* overlaps its cable partner's franchise footprint would mitigate some of the competitive harms. We pointed out that a prohibition in FiOS territories would be insufficient, as it would not address Verizon's reduced incentives to compete with its cable partners by upgrading its ADSL facilities in non-FiOS markets. We also discussed our concerns with how the interaction of the JMA and JOE influence the cable partner's decisions to move from Verizon Wireless agents to mobile virtual network operators (MVNOs), and how the structure of these agreements could harm future competition. Finally, we urged the agencies to place a time limit on the JOE of no more than three years. This, along with a special master acting in an oversight capacity could help ensure the JOE is not used as a vehicle for collusion or other anticompetitive activities.

Sincerely,

/s/

S. Derek Turner
Research Director
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cc (via email):

David Goldman
Paul Murray